

**Remarks by  
Commissioner Curt Hébert  
on  
Independence Pipeline**

**April 25, 2000**

The order issued by the Commission reaffirms substantially all of the objectionable provisions and requirements which I dissented from the Interim Order issued on December 17, 1999. Further, this order fails to address the analysis and discussion of need for the expansion of infrastructure in the transportation of natural gas as mentioned in my concurrence issued in ANR Pipeline Company, Docket Nos. CP99-241-000 and CP99-241-001. While I fully support the entire project, I cannot support the terms and conditions as set forth in the Order. Without justification, this Commission closes its eyes to the policies and precedent of pipeline certification in order to strangle vitally needed pipeline expansion in the Northeast. Once again this Commission fails to utilize the tools clearly at its feet in order to promote an adequate supply of natural gas to consumers as well as enhance and foster reliability in the efficient generation of electricity.

On this particular day, the Commission selectively decides to peer behind contracts in search of a reason to scuttle a project regardless of the financial risk the pipeline companies accept in their feasibility analysis of the projects. This Commission also brands the Independence Pipeline Company with the scarlet letter "A" for their use of affiliate marketers in this highly competitive world. Under normal circumstances, this Commission would no doubt casually toss aside the scarlet letter as meaningless and immaterial to the matter at hand.

The non-affiliate issue concerning the project capacity to be under a firm, long-term contract is at the core of my objections. The basis for such requirements is the misrepresented level of landowner opposition to the proposals and because the project must rely heavily on the use of eminent domain authority to construct their facilities. The Commission places this burdensome standard based on the mere numbers of campaign generated post cards and letters from individuals who are not actually landowners at all, much less, landowners on or adjacent to the pipeline right-of-way. This is made evident in the study by the Interstate Natural Gas Association of America (INGAA) which is discussed in the September 1, 1999 issue of *Public Utilities Fortnightly*. In reality, less than 5% of affected landowners protest, per the INGAA study. I will not succumb to form postcards and letters when the truth of the matter reveals otherwise.

It should be noted the Commission does not stop with the conditions enumerated in the Interim Order, it chooses to draw a personal foul penalty for piling on the pipeline to crimp the pipes. Now the projects, except for Transco, must complete the extraordinary and unprecedented market showing within 60 days of this order or their applications will be

dismissed. Even though the Commission has information that it can take as long as 18 months to market long-term capacity, this term and condition is specifically designed to further diminish any possibility of the project actually being built.

Based on the policies, precedent and guidance of this Commission, the applications for these projects more than satisfied the public interest required for a certificate of public convenience and necessity. I am concerned at the lengths this Commission will go in direct contradiction to the positions stated in the *FERC Staff Analysis of Natural Gas Consumption and Pipeline Capacity in New England and the Mid-Atlantic States*, December 1999, and submitted to the U. S. Senate and House of Representatives December 15, 1999. The report states, "The studies agree that the Northeast gas market will experience significant growth in demand from current levels under all scenarios tested....In addition, the studies agree that the electric power generation market will constitute the single fastest growing segment of the Northeast gas market." This report from FERC staff is not the only expression of support for expansion of the natural gas infrastructure from this administration. The Annual Energy Outlook 2000 (AEO 2000) by the Energy Information Administration (December 19, 1999) resoundingly supports gas pipeline capacity expansion to access new supplies and to serve expanding markets.

It is clear and convincing to me this Commission is not willing to flex the muscles Congress has granted in order to bolster the goals and benefits of fuel alternatives. At the heart of reliability, either electric or gas markets, it is paramount that industry be encouraged to plan and prepare for the foreseeable consequences in the competitive arena. With the ability to bring a combined cycle gas fired generation facility online within 18 months, it is critical to the solution of reliability concerns for natural gas infrastructure be in the ground, and not lost in the sea of traditional regulation.

It is obvious that everyone is keenly aware of this country's dependence on oil imports and the resulting consequences to gasoline prices and the extremely short supply of diesel and heating fuel. The shame of it all is that these consequences are all foreseeable, yet Commission policies and actions either ignore the facts, or fail to use reasonable judgment. Based on the vision and focus of the Commission, the Northeast is destined to experience surging prices for heating oil, and struggle to attract additional sources of electric generation. There is a choice between funding aid for qualified homeowners in the Northeast, or allowing industry to use their reasonable business judgment, and their capital, to provide the obvious needs of the natural gas infrastructure. Government subsidies are a waste of taxpayer funds when industry is denied the opportunity to solve the concerns using a market-based approach. This is true whether talking about hydroelectric or gas fired generation, electric reliability, or the efficient organization and operation of the electric transmission grid. I cannot stand by and ignore the cries for diversification in the energy marketplace. Without adequate infrastructure, and exploration and production, the consumer is left with surging prices for natural gas and heating oil. Competitive choice must be paramount in this journey toward competitive and reliable energy markets.

If FERC cannot foster the proper expansion of the natural gas infrastructure, why should Congress believe that FERC can achieve the same for electric transmission? The Commission has eminent domain authority for siting of pipeline construction as well as jurisdiction over rates. Another example of this Commission not using the authority already granted.

In light of our reorganization in-house, let our actions and policies reflect the convergence of the issues, not just the hierarchy of the regulatory firewall. When and if there are rolling brownouts or blackouts, I hope this agency will take its share of the blame for not fostering adequate infrastructure so that consumers will have choices and therefore lower prices and more reliable energy.